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September 24, 1998

DOCKET FILE 98-147

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Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RE: Deployment of Wireline Services Offering Advanced Telecommunications
Capability, CC Docket No. 98-147

Dear Secretary:

Enclosed for filing are an original and four copies of the Comments of the Public Utility
Commission of Texas in the above referenced proceeding.

Thank you for your assistance.

Sincerely,

Meena Thomas

Meena Thomas
Assistant Director
Office of Regulatory Affairs

Enclosures

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

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SEP 25 1998
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In the Matter of

**Deployment of Wireline Services Offering Advanced
Telecommunications Capability**

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CC Docket No. 98-147

**COMMENTS OF THE
PUBLIC UTILITY COMMISSION OF TEXAS**

**Pat Wood, III, Chairman
Judy Walsh, Commissioner
Patricia A. Curran, Commissioner**

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**COMMENTS OF THE
PUBLIC UTILITY COMMISSION OF TEXAS**

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EXECUTIVE SUMMARY

The Public Utility Commission of Texas (PUCT) is committed to ensuring that the deployment of advanced services occurs in a timely manner throughout the state. In these Comments we discuss our experience overseeing competitive entry and regulating the interconnection activities of incumbent local exchange carriers. At this time, the PUCT takes no position regarding the FCC's proposal to allow incumbent local exchange carriers (ILECs) to create separate affiliates to provide advanced services. In Section II we discuss our concerns should the Commission find that advanced services affiliates are in the public interest. In Section III we explain how targeted actions could be used to offer incentives to ILECs for the development of advanced services. In Section IV we discuss the kinds of collocation, loop, and operation support system measures that can be instituted to promote advanced services competition in the local market. In Section V we describe the unbundling policies in Texas that are enabling competitive providers to have access to ILEC facilities. Section VI contains our position regarding resale. We generally agree with the Commission that some modification of LATA boundaries may be necessary to provide subscribers in rural areas with the same type of access to the Internet that other subscribers throughout the nation enjoy. However, as explained in Section VII, we believe, that "incidental interLATA services" is more appropriately defined on a geographic-specific basis.

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
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Deployment of Wireline Services Offering Advanced)	CC Docket No. 98-147
Telecommunications Capability)	
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**COMMENTS OF THE
PUBLIC UTILITY COMMISSION OF TEXAS**

I. Introduction

1. On August 7, 1998, the Federal Communications Commission (FCC or Commission) released a Memorandum Opinion and Order, and a Notice of Proposed Rulemaking (NPRM) regarding competition in telecommunications markets and the provision of advanced services. The Public Utility Commission of Texas (PUCT), having been given general regulatory authority over public utilities within our jurisdiction in Texas, hereby submits these Comments on the NPRM.

II. Separate Advanced Services Affiliate

2. At this time, the PUCT takes no position regarding the FCC's proposal to allow incumbent local exchange carriers (ILECs) to create separate affiliates to provide advanced services. The Commission requests comments on whether the advanced services affiliate of an

ILEC is likely to favor the ILEC's affiliated information services providers, and, if so, in what ways.¹ The PUCT believes that the advanced services affiliate can act in concert with the ILEC to favor the affiliated information services providers to the disadvantage of other information services providers. The technology road map for telecommunications forecasts a convergence of voice and data in the near future. A greater percentage of future telecommunications traffic may carry data rather than voice. Technologies like xDSL and VON (Voice Over Net) are harbingers of more advanced packet switched telecommunications services. Thus a greater part of our telecommunications needs in the future may be met by the advanced services affiliate and the affiliated information services providers, rather than through the traditional circuit switched network. This may create an incentive for the advanced services affiliate to work in concert with the ILEC to ensure its success and the success of the affiliated information services providers.

3. Moreover, the ILEC and the advanced services affiliate may be governed ultimately by a common board of directors, creating a potential for the ILEC and the advanced services affiliate to be overly supportive of the other's corporate goals and needs. Such a corporate structure could lead to the development of strategic plans between the ILEC and the advanced services affiliate that could place other services providers, like competing ISPs, at a disadvantage. For example, to offer xDSL-based information services it is important to be aware of loop characteristics like the presence of bridge taps, load coils, etc. Depending upon the presence of such loop characteristics, the loop may need to be conditioned to make it suitable for offering

¹ NPRM, ¶ 102.

xDSL-based information services. The ILEC may condition the loop and the advance services affiliate may deploy xDSL network elements (*e.g.* digital subscriber line access multiplexers or DSLAMs) primarily in an area of interest to the affiliated information services provider. This action gives the ILEC's affiliates a strategic advantage over their competitors.

4. The PUCT recognizes that the safeguards delineated in paragraph 96 of the NPRM address some of the concerns that we have expressed above. However, the potential for the advanced services affiliate to become a dominant player in the telecommunications market necessitates a need for adequate oversight of transactions between the ILEC and its advanced services affiliate so that customers have choices and receive the intended benefits of a truly competitive advanced services market. Therefore, if the Commission concludes that it is in the public interest to allow ILECs to create advanced services affiliates, then it must create stringent guidelines, in addition to those delineated in paragraph 96, for the affiliates to be truly separate from ILECs and to deserve the same treatment as other competitive carriers. These additional guidelines could include rules for information sharing and communication between the ILEC and the advanced services affiliate. Although such rules do not completely guarantee that the ILEC and the separate affiliate will not strategically work together, it at least provides some safeguards for anti-competitive behavior.

5. The Commission requests comments how transfers to an advanced services affiliate of, among other things, facilities and customer accounts, should affect the regulatory status of the affiliate.² The PUCT concurs with the Commission's tentative conclusion that transfers of local

² NPRM, ¶¶ 105 and 113.

loops and wholesale transfers of facilities used to provide advanced services, would make the advanced services affiliate an "assign" of the ILEC and subject to the provisions in FTA³ § 251(c). CLECs need access to these facilities and must be able to interconnect if a competitive market for advanced services is to develop. If the state commissions are required to treat the advanced services affiliate just as another unregulated competing carrier, local loops and network elements, facilities, interfaces and systems used to provide advanced services must remain with the ILEC. Therefore, to the extent possible, the separate affiliate must be required to acquire its own facilities to provide advanced services. For example, to provide data services the advanced services affiliate should either buy its own ATM facilities or lease it from the ILEC or any unaffiliated entity. However, if the FCC allows the ILEC to transfer their ATM facilities to the advanced services affiliate, the affiliate will not be under the FTA §251(c) obligation to interconnect with other CLECs.

6. The Commission seeks comment on whether there should be a *de minimis* exception, under which a limited transfer of equipment would not make an advanced services affiliate an assign of the ILEC.⁴ If a *de minimis* exception allows for transfer of facilities from the ILEC to the advanced services affiliate, such transfers should not include facilities that are subject to the requirements of FTA § 251(c).

7. We are also concerned about transfers of intellectual property and proprietary technology to the advanced services affiliate. Transfers of these assets too should make the advanced

³ Federal Telecommunications Act, 47 U.S.C., Pub. L. No. 104-104, 110 Stat. 56 (1996) (FTA).

⁴ NPRM, ¶ 108.

services affiliate an "assign" of the ILEC. Furthermore, some of these assets may have been funded by ratepayers prior to the transfer from the ILEC to the advanced services affiliate. Therefore, state commissions should have an opportunity to review periodic transfers between the ILEC and its advanced services affiliate to ensure that ratepayers are adequately compensated, and to determine whether the regulatory status of the affiliate is affected as a result of the transfer.

III. Targeted Actions

8. The Commission seeks comment on any other specific measures that it should take to provide regulatory relief from the obligations of FTA § 251(c) for ILECs that choose to offer advanced services on an integrated basis.⁵ The PUCT suggests that targeted actions could be implemented after ILECs have fully complied with FTA §§ 271 and 251 to create incentives or alleviate disincentives for the development and deployment of new and advanced technologies. The PUCT notes, however, that any discussion of specific proposals are conceptual in nature and have not been fully developed at the state level.⁶

9. The PUCT believes that targeted actions could be developed to address the development and deployment of new and advanced technologies while balancing that regulatory goal with the pro-competitive intent of the FTA. In Texas, Project No. 19543 was initiated as an attempt to

⁵ NPRM ¶ 184.

⁶ Given the cooperative framework of the FTA, the PUCT believes that a narrowly focused forbearance could take the form of the FCC clarifying the states' authority to develop narrowly-tailored methods to deviate from the specific FTA § 251 mandates to promote the deployment of advanced telecommunications capability. For example, the PUCT's ability to develop such policies at the state level would be assisted if it were given guidance from the FCC as to the PUCT's discretion to authorize deviations from FTA § 251 standards in order to promote advanced telecommunications.

develop policies that reach such a balance. Although this project is still in the early stages, the PUCT will investigate actions that can be taken in this regard. Such actions could theoretically include narrowly-tailored forms of relief (once the requirements of § 10 of the FTA are met). For example, we will be considering policies to ensure that access to ILEC facilities, necessary for the provision of advanced services, is available on an unbundled basis at prices that will provide ILECs with the economic incentive to invest in the deployment of advanced technologies and facilities. Equipment such as a DSLAM could be deemed an unbundled network element (UNE) but pricing for use of such an UNE could reflect the forward-looking economic costs which may equal or almost equal the actual costs incurred by the ILEC for the deployment of such new technology or the price may reflect a higher allocation of common costs so that ILECs have the incentive to invest in new and advanced technologies. Likewise, we will be exploring policies that ensure the availability of ILEC advanced services for resale at wholesale discounts that will adequately compensate the ILECs and incent them to offer advanced services.

10. The PUCT believes other areas for targeted action could be investigated. Most discussions relating to incentives to foster the development and deployment of new and advanced technologies to date have focused on ILECs only. Promotion of these activities may also be addressed at the local level on a system-wide basis. Actions such as promoting the development of more efficient procedures like an electronic operation support system (OSS), supported on a nondiscriminatory basis, may also be worthy of investigation.

IV. Measures to Promote Advanced Services Competition in Local Markets

11. We believe that our experience with arbitration proceedings and more recently SWBT's FTA § 271 collaborative process have already begun to address some of the issues related to collocation and loop spectrum management that the FCC discusses in the NPRM.⁷ We urge the FCC to allow the states to continue working with CLECs and ILECs to resolve competitive issues.

A. Collocation

12. The FCC seeks comment on the extent to which collocation should facilitate the deployment of advanced services.⁸ As demonstrated in the following paragraphs, Texas has developed collocation rules beyond the minimum requirements specified in the FCC's *First Interconnection Report and Order*, CC Docket No. 96-98. The PUCT generally supports the FCC's efforts to establish minimum collocation requirements to facilitate the deployment of advanced services, but suggests that the FCC, instead of voiding existing state collocation agreements, allow the states to revise or adopt additional collocation requirements at their discretion.

13. The FCC seeks comment on whether ILECs should be required to allow new entrants to collocate equipment that is used for interconnection and access to UNEs even if the equipment

⁷ The FTA § 271 collaborative process was established in Project No. 16251 to institute workable solutions to unresolved issues identified in the proceeding that examined SWBT's application to provide in-region interLATA service in Texas.

⁸ NPRM, ¶ 123.

also includes switching functionality.⁹ The FCC tentatively concludes that ILECs should not be permitted to impede competing carriers from offering advanced services by imposing unnecessary restrictions on the type of equipment that CLECs may collocate. The PUCT concurs with the FCC's tentative conclusions and recognizes that modern technology has blurred the distinction between switching and multiplexing equipment. The PUCT has allowed CLECs to collocate remote switching modules (RSMs), a type of equipment that handles both switching and transmission functions.¹⁰

14. The FCC seeks comment on whether carriers should be permitted to collocate other equipment on ILEC premises.¹¹ The FCC tentatively concludes that it should continue to decline to require collocation of equipment used to provide enhanced services. The PUCT believes that collocation of equipment to provide enhanced services should only be permitted in those situations in which the equipment is necessary for interconnection and access to UNEs.

15. The FCC seeks comment on interconnection of CLECs' collocated equipment.¹² The PUCT notes that the FTA does not prohibit the cross-connection between collocated equipment of two different CLECs at the ILEC's premises. The PUCT has determined that, in cases where two or more carriers collocate in an ILEC's premises, the decision to cross-connect carriers

⁹ NPRM, ¶¶ 129 and 130.

¹⁰ *Petition of AT&T Communications of The Southwest, Inc. for Compulsory Arbitration to Establish an Interconnection Agreement Between AT&T and GTE Southwest, Inc. and Contel of Texas, Inc. and Petition of MCI Telecommunications Corporation and its Affiliates Including MCIMetro Access Transmission Services, Inc., for Arbitration and Mediation under the Federal Telecommunications Act of 1996 of Unresolved Interconnection Issues with GTE Southwest, Inc.*, Consolidated Docket Nos. 16300 and 16355, Arbitration Award (Dec. 12, 1996) (GTE Award).

¹¹ NPRM, ¶ 132.

¹² NPRM, ¶ 133.

should not be determined by the ILEC, nor can the ILEC impose any restrictions on collocated carriers for purposes of cross-connection.¹³

16. The FCC asks for comment regarding safety requirements of the equipment that a collocating CLEC places on an ILEC's premises.¹⁴ The FCC tentatively concludes that ILECs may require that all CLEC equipment placed on an ILEC's premises meet safety requirements to avoid endangering other equipment, but to the extent that an ILEC's equipment does not meet Bellcore Network Equipment Building Specifications (NEBS), a CLEC should be able to collocate equivalent equipment. Texas policy is in keeping with the FCC's tentative conclusions.¹⁵

17. The FCC tentatively concludes that alternative collocation arrangements should be encouraged, given that space is limited on ILEC premises and that deployment of advanced services to all Americans must be promoted.¹⁶ Several proceedings are underway in Texas to address these issues. In SWBT's § 271 collaborative process the PUCT is discussing broader policy issues of alternative collocation arrangements and virtual collocation with a number of parties that wish to deploy advanced services.¹⁷ The PUCT is also working with parties to develop a revised virtual collocation tariff in Docket No. 19000.¹⁸

¹³ GTE Award.

¹⁴ NPRM, ¶ 134.

¹⁵ SWBT Order Approving Physical Collocation Tariff, Regulations sheet 27.

¹⁶ NPRM, ¶ 137.

¹⁷ Project No. 16251 Tr. (May 21, 1998).

¹⁸ Docket No. 19000 *Relating to The Implementation of SWBT Interconnection Agreements with AT&T and MCI*.

18. The Commission seeks comments on necessary security measures concerning alternative collocation arrangements.¹⁹ The PUCT has recognized that alternative collocation arrangements must adequately address security concerns and has adopted appropriate security arrangements for various types of collocation situations.²⁰ In the case of collocation arrangements in central offices, physical partitioning of the collocation area has been required to date. In cases where space for collocation is too limited for physical separation, such as in controlled environmental vaults (CEVs), huts and cabinets, collocators are required to use and pay for security escorts. Given that states have experience in creating appropriate guidelines for security measures, the PUCT recommends that the Commission allow states to determine the appropriate policy for this issue.

19. The FCC seeks comment on other measures that would reduce the cost of physical collocation arrangements.²¹ The FCC tentatively concludes that any standards it adopts in this proceeding should serve as minimum requirements, and that states should continue to have

¹⁹ NPRM, ¶ 140.

²⁰ Docket Nos. 16189 *Petition of MFS Communications Company, Inc. for Arbitration of Pricing of Unbundled Loops*; 16196 *Petition of Teleport Communications Group, Inc. for Arbitration to Establish an Interconnection Agreement*; 16226 *Petition of AT&T Communications of the Southwest, Inc. for Compulsory Arbitration to Establish an Interconnection Agreement Between AT&T and Southwestern Bell Telephone Company*; 16285 *Petition of MCI Telecommunications Corporation and its Affiliate MCIMetro Access Transmission Services, Inc. for Arbitration and Request for Mediation Under the Federal Telecommunications Act of 1996*; 16290 *Petition of American Communications Services, Inc. and its Local Exchange Operating Subsidiaries for Arbitration with Southwestern Bell Telephone Company Pursuant to the Telecommunications Act of 1996*; 16455 *Petition of Sprint Communications Company L.P. for Arbitration of Interconnection Rates, Terms, Conditions, and Prices from Southwestern Bell, Telephone Company*; 17065 *Petition of Brooks Fiber Communications of Texas, Inc. for Arbitration with Southwestern Bell Telephone Company*; 17579 *Application of AT&T Communications of the Southwest, Inc. for Compulsory Arbitration of Further Issues to Establish an Interconnection Agreement Between AT&T and Southwestern Bell Telephone Company*; 17587 *Request of MCI Telecommunications Corporation and its Affiliate, MCIMetro Access Transmission Services, Inc. for Continuing Arbitration of Certain Unresolved Provisions of the Interconnection Agreement Between MCIM and Southwestern Bell Telephone Company*, and 17781 *Complaint of MCI Against SWB for Violation of Commission Order in Docket No 16285 Regarding CABS Ordering and Billing Processing*. Arbitration Award (September 30, 1997) (SWBT Award).

²¹ NPRM, ¶ 143.

flexibility to adopt additional collocation requirements, consistent with the Act. The PUCT has established a clear policy concerning the allocation of up-front space preparation charges under which the first collocator is responsible for all costs associated with the preparation of the structures, common areas, and passage ways. Thereafter a prorated share is refunded to the previous collocator(s) as additional entities use the collocation space.²² The PUCT concurs with the FCC's tentative conclusion that states should continue to craft solutions that are responsive to their situations and that federal guidelines should not preempt existing standards.

20. The Commission seeks comments on required timelines for provisioning of collocation space.²³ In response to CLEC concern that there may be undue delays for ordering and provisioning of collocation space, the PUCT has set specified intervals for the elapsed time between a CLEC's initial request for collocation and an ILEC's response to the request, including when an ILEC must make available information about collocation space availability and price.²⁴

²² SWBT Award.

²³ NPRM, ¶ 144.

²⁴ Docket Nos. 16189 *Petition of MFS Communications Company, Inc. for Arbitration of Pricing of Unbundled Loops*; 16196 *Petition of Teleport Communications Group, Inc. for Arbitration to Establish an Interconnection Agreement*; 16226 *Petition of AT&T Communications of the Southwest, Inc. for Compulsory Arbitration to Establish an Interconnection Agreement Between AT&T and Southwestern Bell Telephone Company*; 16285 *Petition of MCI Telecommunications Corporation and its Affiliate MCIMetro Access Transmission Services, Inc. for Arbitration and Request for Mediation Under the Federal Telecommunications Act of 1996*; 17065 *Petition of Brooks Fiber Communications of Texas, Inc. for Arbitration with SWB*; 16290 *Petition of American Communications Services, Inc. and its Local Exchange Operating Subsidiaries for Arbitration with Southwestern Bell Telephone Company Pursuant to the Telecommunications Act of 1996*; 17579 *Application of AT&T Communications of the Southwest, Inc. for Compulsory Arbitration of Further Issues to Establish an Interconnection Agreement Between AT&T and Southwestern Bell Telephone Company*; 17587 *Request of MCI Telecommunications Corporation and its Affiliate, MCIMetro Access Transmission services, Inc., for Continuing Arbitration of Certain Unresolved Provisions of the Interconnection Agreement Between MCIM and Southwestern Bell Telephone Company*; and 17781 *Complaint of MCI against SWB for Violation of Commission Order in Docket No. 16285 Regarding CABS Ordering an Billing Processing. Order Approving Physical Collation Tariff* (Mar 9, 1998) (SWBT Tariff Order).

21. The FCC seeks comment on how it should address the issue of space limitations in ILEC facilities.²⁵ The FCC tentatively concludes that when an ILEC denies a request for physical collocation due to space limitations, certain steps should be taken: (1) requesting CLECs should be able to tour the facility and identify space available for physical collocation; and (2) state commissions should have a role in determining whether an ILEC's facility does indeed have sufficient space for physical collocation. Through arbitration proceedings with SWBT, the PUCT has developed physical collocation policies similar to the tentative conclusions of the FCC.²⁶ The PUCT's policy allows collocators to tour the ILEC's facilities to determine whether there is space for physical collocation. Should the collocator and the ILEC disagree on the issue of space availability, the determination is made by a third-party engineer agreed upon by both parties. The findings of the third-party engineer are binding on both parties and made publicly available by the ILEC to other future collocators upon request. Should the third-party engineer determine that physical collocation is not feasible, future collocators may challenge that determination.

B. Loops and Operation Support Systems

22. The FCC tentatively concludes that ILECs should share information about loops with CLECs.²⁷ The FCC also tentatively concludes that information on the loop provided to competitors should be in parity with that available to the ILECs, as it is critical to their implementation of more sophisticated services, such as xDSL.

²⁵ NPRM, ¶ 146.

²⁶ SWBT Tariff Order.

²⁷ NPRM, ¶ 157.

23. We agree with the FCC that the CLECs must have timely and accurate information about the network and associated systems in order to provide advanced services and technologies. In Texas most of the information on loops and network elements is maintained manually by the ILECs, and is not easily accessible by third parties. In the FTA § 271 collaborative process, SWBT has agreed to produce a technical manual showing CLECs how to use the unbundled loops in providing both ADSL and HDSL.²⁸ This method may prove to be inefficient as the volume of CLEC inquiries increases. Increased volume may necessitate an electronic OSS that provides access to a database of information on individual loop characteristics. SWBT has agreed to discuss results of its ADSL trial in Texas and the ordering process including transition to an electronic OSS with CLECs.²⁹

24. The PUCT is aware that there may be substantial up-front development and set-up costs associated with developing an electronic OSS. One possible method of recovering these costs would be to allocate them in a competitively neutral manner since both ILECs and new entrants would benefit from the development of an electronic OSS. The use of TELRIC pricing principles may not allow for the recovery of such up-front costs and could thereby create a disincentive for the development of the new electronic system. The PUCT believes that TELRIC is a sound, efficient pricing method for the recovery of any recurring costs associated with the operation of an electronic OSS.

²⁸ Project No. 16251 Tr. (May 21, 1998).

²⁹ Project No. 16251 Tr. (May 21, 1998).

25. The FCC seeks comment on loop spectrum management.³⁰ We believe that it is essential to establish a sound method of spectrum management. Specifically, the PUCT is concerned that pairs of wire in the same binder group within a cable may have adverse effects upon one another if the cable pair assignment for a given spectrum is not well coordinated. For example, ADSL can interfere with digital data services offered over an adjacent twisted pair copper wire. Because spectrum management involves information and equipment that are unique to each state, it is our opinion that regulation of spectrum management, as it relates to unbundled cable facilities, should be handled at the state level. SWBT has agreed to discuss spectrum management policy and its method of determining impairment factors within a binder group with CLECs.³¹

V. Unbundling

26. The Commission seeks comment on whether its current definition of the loop is sufficient to ensure that CLECs have access to all the loop functionalities they need to offer advanced services.³² The PUCT is concerned that ILECs may be tempted to offer UNEs in a form tailored to the needs of its affiliate, which may force CLECs to purchase items that they do not need. For this reason, we believe there is need to promote unbundling at as practical a level as possible. The PUCT has unbundled the loop to the distribution level, and in certain cases, to the feeder level.³³ This may include, for example, dark fiber, 4-wire copper conditioned for DS-1, and

³⁰ NPRM, ¶ 159.

³¹ Project No. 16251 Tr. (May 21, 1998).

³² NPRM, ¶ 164.

³³ See Interconnection Agreement Between AT&T and SWBT, Docket No. 16226, Attachment 6 Part 4.6 (April 2, 1998).

DLCs (Digital Loop Carriers)--that independently constitute an UNE, but that are not subject to further unbundling. The PUCT also requires GTE to take measures to assure service quality when unbundling at the Feeder Distribution Interface (FDI).

27. The Commission requests comments on specific unbundling obligations for network elements used to provide advanced services and whether the Commission should modify the current unbundling rules in light of technological and market advances.³⁴ The PUCT concurs with the Commission that the pro-competitive provisions of the FTA apply equally to advanced services and to circuit-switched voice services.³⁵ ILECs should not prevent the CLECs from accessing network elements because they provide advanced services like xDSL. We believe that to the extent that advanced services are provided by an ILEC on an integrated basis, network elements used by the ILEC to provide such services should be unbundled and subject to the obligations in FTA § 251(c)(3). Additionally, if the ILEC provides network elements to an advanced services affiliate, the same elements should be provided to a CLEC on non-discriminatory basis. However, the PUCT believes that the FCC should not impose unbundling requirements specific to the provision of advanced services. It is our opinion that the functionalities that CLECs want to access for the provision of advanced services reside, in part in the network elements already identified by the FCC, *i.e.* loops, NID, switching, signaling, etc. By keeping the network unbundling requirements at this level, the FCC can maintain technically neutral rules. We believe that the states should be allowed to determine additional unbundling requirements based on specific ILEC network architecture.

³⁴ NPRM, ¶ 180.

³⁵ NPRM, ¶ 11.

28. The Commission asks whether attributes of particular network elements make unbundling them technically infeasible.³⁶ The PUCT notes that as technology evolves separate network functions may be integrated into single components. For example, equipment that integrates DSLAM and switching functions may make physical unbundling infeasible. The evolution of technology may further complicate implementation of the ILECs' obligations under FTA § 251(c). Furthermore, if different functionalities necessary to offer advanced services cannot be physically separated, collocation arrangements that allow CLECs to place their own equipment in ILEC facilities will become even more critical.

29. With regard to unbundling standards the NPRM notes that the Commission's list of network elements identified for unbundling serves as the minimum unbundling requirements and that the Commission might identify "additional, or perhaps different" unbundling requirements in the future.³⁷ In the arbitrations conducted to implement the interconnection provisions of the FTA, the PUCT has used the provisions of the First Report and Order as a guide in identifying other network facilities beyond those identified by the FCC. The PUCT was able to take into account state-specific and company-specific factors in determining the extent of technically feasible unbundling. It is imperative that we continue to have this authority in order to increase the deployment of advanced services to all Texans in a timely manner.

30. The Commission seeks comments on whether there are any additional criteria under FTA § 251(d)(2) that it should consider when identifying those network elements used to provide

³⁶ NPRM, ¶ 182.

³⁷ NPRM, ¶ 51.

advanced services that must be subject to FTA § 251(c)(3).³⁸ The PUCT believes that ILECs are obligated to make available to CLECs on an unbundled basis all network elements used to provide advanced services. However, we recognize that technical constraints may place a limit on the degree to which ILECs can unbundle network elements used to provide advanced services. We believe that unbundling of network elements used to provide advanced services should be done when (a) it is technically feasible, (b) it does not impair the quality of the telecommunications service currently provided by the ILEC, and (c) does not affect the provision of emergency services such as 911.³⁹

31. Much like the issue of spectrum management, the unbundling of physical components will require analysis of state-specific and perhaps company-specific facilities and would suffer from using a nation-wide "blanket" policy.

VI. Resale

32. The Commission tentatively concludes that advanced services are fundamentally different from the exchange access services and are subject to FTA § 251(c)(4).⁴⁰ The PUCT agrees that advanced services will be offered predominantly to ordinary residential or business users or to Internet service providers and should be subject to the FTA § 251(c)(4) resale obligation.

³⁸ NPRM, ¶ 181.

³⁹ See PUCT's decisions relating to ethernet in Docket No. 17922. *Petition of Waller Creek Communications, Inc. for Arbitration with Southwestern Bell Telephone Company*. Arbitration Award and Order (Dec. 29, 1997).

⁴⁰ NPRM, ¶ 188.

VII. LATA Boundary Modification

33. The FCC seeks comment on the scope of FTA § 271(b)(3) of the Act, which permits the RBOCs and their affiliates to provide certain “incidental interLATA services.”⁴¹ The PUCT generally agrees with the FCC’s tentative conclusion that “some modification of LATA boundaries may be necessary to provide subscribers in rural areas with the same type of access to the Internet that other subscribers throughout the nation enjoy.”⁴² However, the PUCT disagrees that FTA § 271(b)(3) may be used for this purpose. Section 271(b)(3) is a narrow provision for “incidental interLATA services.” A broad reading that would interpret FTA § 271(b)(3) as providing broad waiver authority on a service specific or even a school and library exception is inconsistent with the term “incidental interLATA services.” Instead, “incidental interLATA services” is more appropriately defined on a geographic-specific basis. For example, a community with a economic interest with a neighboring city across a LATA boundary may be entitled to a waiver as an “incidental LATA services” basis. This example is “incidental” because the exception is narrow and a recognition that the drafting of specific LATA boundaries was not an exact science.

34. On the other hand, a waiver that “disregards” the existence of a LATA boundary for specific services is not incidental. Instead of a simple reconciling of the LATA boundary with specific community interests, a service-specific waiver or a customer class-specific waiver is a broad-based waiver that would be inconsistent with the narrow language of FTA § 271(b)(3).

⁴¹ NPRM, ¶ 190.

⁴² NPRM, ¶ 194.

35. Although the PUCT does recognize that waiver of LATA boundaries could be an equitable remedy for rural areas to obtain advanced services at parity with more densely populated areas, because of FTA § 271(b)(3) inapplicability the only avenue remaining for RBOCs would be regulatory forbearance. However, based on the FCC's conclusion that the provisions of FTA § 251(c) and FTA § 271 must be met before forbearance may be applied pursuant to FTA § 10, the issue of a waiver from LATA boundaries becomes moot. In other words, since FTA § 271 must be met before forbearance authority can be applied to FTA § 271, LATA boundary restrictions would be lifted prior to a LATA forbearance request being granted. Thus, consistent with the procompetitive framework of the Act, to the extent that RBOCs wish to benefit from the economies of scale that can be achieved through LATA aggregation, those benefits are available contingent upon the full implementation of FTA §§ 251(c) and 271. An opposite decision could harm the availability of advanced services to rural communities in the long run because the development of sustainable competition, and thus the benefits of competition, could be stalled by lessening the RBOCs' incentive to fully implement those sections.

VIII. Conclusion

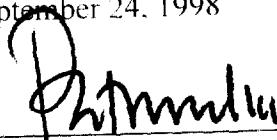
36. The PUCT strongly supports the FCC's goal of promoting rapid deployment of new and advanced technologies while ensuring that all telecommunications markets are open to competition consistent with the pro-competitive intent of FTA. To this end, we are currently exploring policies in several on-going proceedings to encourage the deployment of advanced services in Texas.

37. While we neither support nor object to the FCC's proposal to allow the creation of separate affiliates by the ILECs for the provision of advanced services, we have attempted to relay our concerns should the FCC find that advanced services affiliates are in the public interest. We have also sought to share the experience we have gained thus far in arbitration proceedings and the FTA §271 collaborative processes on many issues that are critical for the deployment of advanced services in a competitive manner. We appreciate the opportunity to comment on this important subject and we look forward to continuing a productive state-federal partnership to bring the benefits of competition for advanced services to all consumers as quickly as possible.

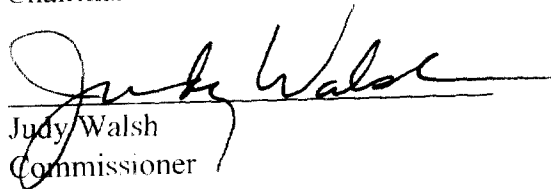
Respectfully submitted.

Public Utility Commission of Texas
1701 N. Congress Ave.
Austin, Texas 78711

September 24, 1998



Pat Wood, III
Chairman



Judy Walsh
Commissioner